IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 14TH MARCH 2007 / 23RD PHALGUNA 1928

OP.No. 5527 of 1999(G)

PETITIONER:

M.J. JAMES, MAMPILLY HOUSE, EROOR P.O., SOUTH.,
TRIPUNITHURA, ERNAKULAM.

BY ADV. SRI.M.A.FIROZ
SRI.M.A.FIROZ
SRI.C.S.ULLAS

RESPONDENTS:
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1. THE CHAIRMAN, STATE BANK OF INDIA, CENTRAL OFFICE,
MADAM COMA ROAD, MUMBAI – 400 021.

2. THE CHIEF GENERAL MANAGER, STATE BANK OF INDIA,
LOCAL HEAD OFFICE, 21 RAJAJI SALAASI, CIRCLE TOP HOUSE,
CHENNAI 600 001.

BY ADV. SRI.GEORGE THOMAS

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 14/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP 5527/099

APPENDIX

PETITIONER'S EXTS:

EXT. P1 TRUE COPY OF THE SUSPENSION ORDER REF.NO.HO.PER/613/84 DT. 1.2.1984 ISSUED BY THE PETITIONER.

EXT.P2 TRUE COPY OF THE MEMORANDUM OF CHARGES REF:NO.HO.PER/727/84 DATED 9.2.84 ISSUED TO THE PETITIONER.

EXT.P3 TRUE COPY OF THE EXPLANATION DT. 30.3.84 SUBMITTED BY THE PETITIONER.

EXT.P4 TRUE COPY OF THELETTER DT. 24.4.84 SUBMITTED BY THE PETITIONER.

EXT.P5 TRUE COPY OF THE REPRESENTATION DT. 18.7.84 SUBMITTED BY THE PETITIONER.

EXT.P6 TRUE COPY OF THE DOMESTIC ENQUIRY REPORT DT.8.11.84 ISSUED BY THE PETITIONER.

EXT.P7 TRUE COPY OF THE ORDER NO.REF.NO.HO.PER/2859/85/ DT.18.4.85 ISSUED TO THE PETITIONER.

EXT.P8 TRUE COPY OF THE APPEAL DT. 20.9.89 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

EXT.P9 TRUE COPY OF THE HO. CIRCULAR ADV. NO.82/82 DT. 21.6.82 SUBMITTED BY THE GENERAL MANAGER.

EXT.P10 TRUE COPY OF THE ARGUMENTS NOTES DT. 22.12.98 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

EXT.P11 TRUE COPY OF THE APPELLATE ORDER NO.PER/GB/93 DT. 23.1.99 OF THE 2ND RESPONDENT.

Antony Dominic, J.
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O.P.No.5527 of 1999
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Dated this the 14th day of March, 2007.

JUDGMENT

Petitioner, who was dismissed from service of the erstwhile Bank of Cochin by Ext.P7 order, which was confirmed by Ext.P11 order by the State Bank of India, has filed this Original Petition seeking to have the aforesaid orders quashed and for a direction reinstating him in service. Among other reliefs, the petitioner is also seeking an order directing the respondents to have a fresh enquiry conducted in accordance with the Rules.

2. The facts of the case are that Ext.P2 is a memo of charges issued to the petitioner alleging commission of certain misconducts, such as, violation of head office instructions, etc., causing financial loss. By Ext.P2, the petitioner was called upon to submit his explanation on the memorandum of charges and was informed that on his failure, further action will be initiated. Responding to Ext.P2, the petitioner submitted Ext.P3 explanation, seeking to justify the misconducts alleged. It would appear that eventually an Advocate was appointed as an Enquiry Officer and by Ext.P4, the petitioner sought permission of the Enquiry Officer to be represented by

F.B.Chrysostum, Organising Secretary of All India Confederation of Bank Officers Organisation, Kerala Unit, who was not an employee of Bank of Cochin. It is also seen that the request of the petitioner was again reiterated in the enquiry held on 18.7.1984. It would appear from the records that the management objected to the request made by the petitioner on the ground that only an employee of the Bank of Cochin can be permitted to assist a delinquent in the domestic enquiry.

3. It is stated in the enquiry report that on 25.6.1984, when the management filed its objection as stated above, taking into account the objection so raised, the request of the petitioner to bring in Chrysostum, as assisting colleague, was disallowed by the Enquiry Officer. Thereafter, the Enquiry Officer proceeded further with the enquiry and the management adduced evidence by examining its witnesses. It is stated that the petitioner participated in the enquiry and on the close of the evidence by the management, the petitioner informed the Enquiry Officer that he had no witness to be examined or other evidence to be adduced. It is stated that thereafter, the Enquiry Officer submitted Ext.P6 report on 8.11.1984, finding that the allegations and charges in Ext.P2 memorandum of charges are proved and that the petitioner was guilty of the charges. Based on the enquiry report, the Disciplinary Authority initiated further action which

resulted in Ext.P7 order dated 18.4.1985 by which the petitioner was ultimately dismissed from the service of the Bank.

4. Subsequently, the Bank of Cochin was amalgamated with the State Bank of India and Ext.P8 appeal was filed by the petitioner before the Chief General Manager, Local Head Office, State Bank of India, on 20.9.1989 which obviously was after four years of his dismissal. It is stated that appeal so filed was kept pending so long and complaining of inaction on his appeal, the petitioner filed O.P.No.19807 of 1998 before this Court, which was disposed of on 14.10.1998 directing the second respondent to consider the petitioner's appeal and to pass appropriate orders after affording the petitioner an opportunity of being heard.

5. Thereafter, the petitioner submitted Ext.P10, an argument note, before the Appellate Authority. Finally, the Appellate Authority considered the appeal on merits and by Ext.P11 order dated 23.1.1999 dismissed the same. It is thereupon that this Original Petition has been filed by the petitioner seeking the reliefs mentioned above. Counter affidavit and an additional counter affidavit have been filed by the Bank and reply affidavit has also been filed by the petitioner controverting the contentions of the respondents.

6. When the matter was taken up for hearing, Shri.M.A.Firoz,

the counsel for the petitioner confined his submissions to two points. The first submission made by the counsel for the petitioner was that even if the misconducts alleged against the petitioner were taken at its face value, they constitute only minor misconducts, as defined in Bank of Cochin Service Code (hereinafter referred to as "Service Code"), in terms of which, the petitioner was charge sheeted. The other submission made by the counsel for the petitioner was that the petitioner sought to be represented by the Organising Secretary of All India Confederation of Bank Employees, Kerala Unit, by Ext.P4 and by denying the same, he was not afforded a reasonable opportunity of being defended in the disciplinary proceedings and therefore, the disciplinary action is vitiated.

7. Shri. George Thomas, counsel for the respondents submitted that the enquiry was valid and that in fact, it is a case where the delinquent had confessed his guilt in Ext.P3 reply submitted by him in response to Ext.P2 memorandum of charges. He would also submit that the allegations levelled against the petitioner, constitute gross misconduct as defined in the Service Code mentioned above and therefore, the first point urged by the counsel for the petitioner had no substance. Answering the second plea urged by the counsel for the petitioner, Shri.George Thomas, would argue that the right to

representation by a delinquent in a disciplinary action is regulated by the Rules governing the same. According to him, this right is regulated by the Service Code, which recognised only a right to be represented by an internal union representative and not an external one. He would, therefore, submit that the enquiry against the petitioner cannot be invalidated on either of the grounds urged by the counsel for the petitioner.

8. In so far as the first contention urged by the counsel for the petitioner is concerned, he would place reliance on Clause 22(6) of Chapter 8 of the Bank of Cochin Service Code, which defines "minor misconduct". According to him, the misconducts in question comes within Clause 22(vi)(d) of the Bank of Cochin Service Code in as much as it was only breach of any rule of business of the Bank or instruction for running of any department. According to him, the finding of guilt cannot result in the dismissal of an employee as has happened in this case. However, having considered this submission, I am not in agreement with the counsel for the petitioner. Gross misconduct has been defined in Clause 22(iv) of the Bank of Cochin Service Code and the misconduct alleged against the petitioner in this case would come within the clause 'l' thereof,which is extracted below for reference:

> "22(iv) By the expression "gross misconduct" shall be meant any of the following acts and/or omission on the

part of an employee:

> (l) doing any act prejudicial to the interests of the Bank, or gross negligence or negligence involving or likely to involve the Bank in serious loss;"

In this case, a perusal of Ext.P2 would show that the allegations included granting of unauthorised advances, granting advances beyond the discretionary power/without head office sanction, documentary bills purchased, head office sanction/ratification not obtained for the advances, etc. Normally, a charge sheet is specific regarding the alleged misconducts and the relevant provisions of the standing order is indicated in the charge sheet itself. But in Ext.P2, though the allegations have been mentioned in detail, the relevant provisions of the Service Code are not mentioned. In fact, it is this, which has given rise to this contention. Be that as it may, the allegations detailed in Ext.P2 would certainly constitute gross misconducts which are covered by Clause 22(iv)(l) of the Service Code. If this misconduct is proved in a validly conducted enquiry, I see no reason to find fault with the Bank if dismissal is the punishment that is considered appropriate by them.

9. The other submission made by the counsel is regarding the right of the employee to be represented by a union representative.

Clause 22(ix)(a) of the Service Code provides the procedure in cases where an enquiry is conducted, which is extracted below for reference:

> "22(ix) The procedure in such cases shall be as follows:
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> (a) An employee against whom disciplinary action is proposed or likely to be taken shall be given a charge sheet clearly setting forth the circumstances appearing against him and a date shall be fixed for an enquiry, sufficient time being given to him to prepare and give his explanation as also to produce any evidence that hen may wish to tender in his defence. He shall be permitted to appear before the officer conducting the enquiry, to cross examine any witness and produce other evidence in his defence. He shall also be permitted to be defended by a representative of a registered Union/Association of Bank employees or with the Bank's permission, by a lawyer. He shall also be given a hearing as regards the nature of the proposed punishment in case any charge is established against him".

This inter alia provides that a delinquent shall be permitted to appear before the Enquiry Officer to cross examine any witness and produce other evidence in his defence and that he shall also be permitted to be defended by a representative of a registered Union/Association of Bank employees or with the bank's permission, by a lawyer. In so far as this case is concerned, the delinquent sought permission of the Enquiry

Officer to be represented by the Organising Secretary of All India Confederation of Bank Officers Association, Kerala Unit, who was not an employee of Bank of Cochin. It is stated during argument that membership of the Association though limited to Bank employees, it is not confined to any particular Bank, and therefore, counsel for the Bank would submit that such an Organisation do not come within the expression "registered Union/Association of the Bank employees" as occurring in Clause 22(ix)(a) of the Service Code. According to him, the word "Bank" figuring in Clause 22(ix)(a) of the Service Code mentioned above, has to be understood in the context of the definition of the expression "Bank" occurring in Clause 2(e) of the Service Code. According to him, since Bank has been defined to mean Bank of Cochin Limited, and the request for representation by an outsider is impermissible and that the Enquiry Officer has rightly rejected the request. Prima facie, this is a plausible interpretation of the Service Code.

10. However, counsel for the petitioner referred me to the additional reply affidavit filed by the petitioner. In paragraph 3 of the additional reply affidavit, it is stated thus: "In innumerable cases the Bank of Cochin had allowed employee from other Banks to represent the delinquent employee of it in enquiries." It is also stated that "For

instance, in the enquiry against K.V. Antony, Manager, Vyttila branch, one Sri.Mathew, Central Bank of India who was the Organising Secretary of A.I.B.E.F. conducted the defence." It is further stated that "in the enquiry against Joy K., Officer in Head Office of the Bank, one Sri.K.B.Gopalakrishna of State Bank of India, who was the office bearer of All India Bank Officers Association conducted the defence." It is thus contended that the argument of the Bank that in view of the provisions contained in the Service Code the right to representation was confined to the employees of the Bank of Cochin was incorrect. When this was pointed out to the counsel for the respondents, his argument in reply was that ordinarily employees shall be permitted to be defended by a representative of a registered Union/Association of employees of the Bank of Cochin, who should also be an employee of Bank of Cochin, but in view of the provisions contained in Clause 22(ix) (a) of the Service Code, the Bank also had the freedom to permit representation by the outsiders, who are also Union/Association representatives of employees of the Bank, as in this case. According to him, this was a discretionary right available to the Management and that though in appropriate cases permission can be granted, none can demand this as a matter of right.

11. Thus, the position as crystallised by the Service Code, the

documents on record and submission of the counsel for the respondents, is to the effect that the Bank would ordinarily permit representation only by an inside Union representative, but also can permit representation by outsiders as well in cases which are appropriate according to them. If that be the position, the further question is whether in a case where a delinquent makes such a request, there was justifiable reasons to have denied him permission to be represented by an outsider. It is certainly for the Bank to satisfy this Court that the request made was considered and was rejected for valid reasons. In this case, no such explanation is forthcoming either in the pleadings or even the arguments and therefore, I have to presume that denial of the request made by the petitioner as per Ext.P4 to be represented by the Organising Secretary of All India Confederation of Bank Officers Organisation, Kerala Unit was not justified. If that be so, I will have to conclude that the petitioner was denied a reasonable opportunity to be defended in the domestic enquiry.

12. It is pointed out that the petitioner participated in the enquiry till the proceedings were completed by the Enquiry Officer and he is recorded to have informed that he had no evidence and walked out. True that the petitioner had participated in the enquiry, but then

the question is whether the petitioner had a reasonable opportunity to defend himself in the enquiry. In this case, it is not only violation of the principles of natural justice that is involved, but also the petitioner's request to be represented by a Union of his choice as provided in the Service Code was denied and that too, for no reason. In view of this, the proceedings against the petitioner cannot be sustained at least from the stage where his request was turned down. The Bank having chosen to conduct a domestic enquiry against the petitioner and act upon the report submitted by the Enquiry Officer, cannot now seek to justify their refusal to permit the delinquent to be represented by his representative on the ground that in his reply to the memo of charges, the delinquent has admitted the guilt. I am also not impressed by the submission of the counsel that the departmental appeal filed by the petitioner was delayed. The Bank had considered and disposed of the appeal on merits. This only indicates that the delay, if any, was condoned. Counsel for the Bank also addressed an argument that violation of the principles of natural justice has to be tested in the light of Doctrine of Prejudice, and that in this case, there was nothing on record to prove that any prejudice was caused to the petitioner. Had it been a case of violation of the principles of natural justice alone, I could have appreciated this contention. I have already

found that what was asked for by the delinquent, was even according to the Bank, permissible as per the Service Code. If that be so, there is violation of the Rules governing the right of representation in the domestic enquiry. If that be so, further proceedings initiated against the petitioner on the basis of the memo of charges cannot be upheld and for that reason, I am inclined to set aside Exts.P7 and P11. Accordingly, Exts.P7 and P11 will stand quashed.

13. It was pointed out that during the pendency of the proceedings, the petitioner has attained the age of superannuation. If the rules permit, it will still be open to the Bank to continue the disciplinary proceedings against the petitioner from the stage it has been invalidated.

The Original Petition will stand allowed.

Antony Dominic
Judge.

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